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SUBJECT: LESOTHO: GRIEVANCES AIRED AT LAW SOCIETY OF LESOTHO
SYMPOSIUM

Summary

¶1. The Law Society of Lesotho, which is the equivalent of the Bar Association in the U.S., hosted a symposium to discuss and provide analysis on the controversial Marematlou Freedom Party (MFP) vs. Independent Electoral Commission (IEC) and others ("MFP vs. IEC") case on August 27, 2009. Participants included leaders and representatives of political parties; civil society organizations; members of the Law Society of Lesotho; academics; Members of Parliament; the United Nations Development Program (UNDP); members of the Diplomatic Corps; and Government Ministers. The Deputy Prime Minister, Lesao Lehohla; the Minister of Communications and Secretary General of the governing Lesotho Congress for Democracy (LCD), Mothojoa Metsing; and Khotso Matla, Assistant Minister of Trade and Industry, who is also the LCD's Publicity Officer and a member of the National Executive Committee. The leader of the main opposition party, the All Basotho Convention (ABC), Tom Thabane, was also present, while the leader of the Basotho National Party (BNP), Major General Lekhanya, was conspicuously absent. Despite Lekhanya's absence, the BNP was represented by two former army officers. The proceedings generated heated debate but all participants remained fully engaged and orderly until the program ended.

Ruling Party refuses to reconsider the outcome of the 2007 elections

¶2. Minister Metsing, in his capacity as acting Minister of Justice, Human Rights and Correctional Service and of Law and Constitutional Affairs, opened the symposium. Metsing reiterated that the courts of law have pronounced themselves on the controversial issue of allocation of proportional seats in the National Assembly, and he urged other parties to accept the ruling. He also stressed that the formation of an alliance with the National Independent Party (NIP) prior to the 2007 snap elections was legal. (Note: Formation of the LCD/NIP and the All Basotho Convention/Lesotho Workers Party (LWP) alliances sparked protest to the IEC by other opposition parties both before and after the vote. These controversial alliances have led to the current political impasse as a result of the disputed allocation of proportional seats. End note)

MFP Chair alleges foul play in High Court's decision

¶3. The second speaker to take the floor was the Vice President of the Law Society, Advocate M. Nthloki. Nthloki explained the background of "MFP vs. IEC". In 2007, Nthloki represented the leader of the NIP, Anthony Manyeli, who had protested that the IEC had rejected his party list for candidates while accepting a party list from his deputy. His deputy's list included senior members of the ruling LCD party against Manyeli's wishes. For the first time, Nthloki revealed that the judge who had presided over the MFP case had confessed to him in chambers and in the presence of the ABC/LWP lawyer, that he made his decision on the case "against his conscience".

Presenters point out issues of concern

¶4. Other presenters showed concern about various aspects of the post-election reaction in 2007. Concerns raised included:

- * Claims that allocation of the 2007 PR seats violated the Mixed Member Proportional model (MMP). Lesotho's electoral system. Presenters claim that two of the electoral alliances, LCD/NIP and ABC/LWP, had deliberately contrived to defraud the model - with mixed fortunes.

- * Allegations that as implementer of the electoral law, the IEC failed dismally in its duty. It was further alleged that - in a meeting with Professor Jorgen Elklit and Ms Maryan Street on February 24 2007 - the IEC had noticed that the formula used to allocate the seats was incorrect. (Note: Professor Elklit, of Aarhus University in Denmark, worked closely with the IEC and Lesotho political parties when the MMP was introduced. Maryan Street is a New Zealand member of Parliament who was an official election observer during the 2007 election. The MMP was adapted from the New Zealand model and officials of the IEC have visited Wellington to study the model in practice. End Note.)

- * Proposals that there are serious weaknesses in electoral law which need to be amended. For example, some institutions of the state are currently immune to legal scrutiny in matters affecting elections.

- * Complaints that unlike "First Past the Post" seats - which belong to elected MPs - Proportional Representation seats belong to political parties. Presenters say it is unacceptable to "disentitle" the MFP or any other political party from their right to seek legal relief if they feel PR seat allocation has not been completed fairly.

- * Concerns that the MFP case precipitated a "crisis of confidence" in key organs of the state.

Examples include:

- i. The IEC for allegedly applying the electoral law incorrectly in the 2007 seat allocation.

- ii. The GOL's apparent unwillingness to search for a universally-accepted solution to the current impasse.

- iii. The judiciary allegedly inconsistently interpreting the law regarding elections;
and allegedly failing to discharge its responsibility as a "Court of Disputed Returns".

- iv. The current parliament allowing the participation of MPs whose right to the seats they are holding is disputed.

Recommendations from the Symposium

¶5. At the conclusion of the symposium, the following recommendations were made:

- * Electoral law should be amended to rectify identified weaknesses.

- * Electoral ballots should be printed in Lesotho

- * Ensure a "Clean Parliament" by correctly re-allocating PR seats

- * Review the composition of the Council of State

- * Consider Government of National Unity as the answer to

the current political impasse

- * Establish an arbitration body which includes political parties and the IEC to consider electoral disputes before they go to the High Court

- * Strengthen political parties and local institutions

- * IEC must be accountable to opposition parties and the general public

- * Instead of removing the current twenty MPs from NIP, include twenty new MPs from the opposition to fill the disputed PR seats. This would be a creative solution to the current political situation

- * LCD listen and enter into sincere dialogue with the opposition

Comment

¶16. The symposium was very useful and informative. It generated a lot of interest and debate on important issues facing Lesotho. Participants were fully engaged in the discussions. This forum allowed people from different sectors to come together and analyze the Lesotho's political problems. It also gave them a chance to make their own suggestions to solve the problem. The IEC, High Court and the LCD came under heavy criticism for precipitating the current impasse. One political science student from the National University commented that "Justice should not be a foreigner to Lesotho and peace should not be a visitor."

¶17. While some of the recommendations made were sound and well thought out, all parties still appear to be deeply entrenched in their own perspectives. Many participants pointed out that it is up to those in power to have the political will to consider the recommendations made in order to change the status quo.

NOLAN